

# Minnesota Public Utilities Commission

## *Staff Briefing Papers*

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Meeting Date: **March 24, 2005** ..... Agenda Item #\_\_\_\_

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Company: Northern States Power Company (d/b/a Xcel Energy)

Docket No. E-002/CN-05-123  
In the Matter of the Application of Northern States Power Company (d/b/a Xcel Energy) for a Certificate of Need to Establish an Independent Spent Fuel Storage Installation at the Monticello Generating Plant

Issue(s): Should the Commission accept the application as substantially complete? Should the docket be referred to the Office of Administrative Hearings for the purpose of conducting a contested case proceeding? Should the Commission establish any other guidelines for this proceeding?

Staff: David Jacobson ..... (651) 297-4562  
Janet Gonzalez ..... (651) 296-1336  
Bret Eknes ..... (651) 296-8667

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### ***Relevant Documents***

Minn. Rules, parts 7855.0010 to 7855.0670

Xcel Energy's Application, received January 18, 2005 ..... #1  
(A list of comments received is provided on the next page.)

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The attached materials are workpapers of the Commission Staff. They are intended for use by the Public Utilities Commission and are based upon information already in the record unless otherwise noted.

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### ***Statement of the Issue***

Should the Minnesota Public Utilities Commission (the Commission) accept the application of Northern States Power Company (d/b/a Xcel Energy) as substantially complete? Should the docket be referred to the Office of Administrative Hearings for the purpose of conducting a contested case proceeding? Should the Commission establish any other guidelines for this proceeding?

### ***Additional Relevant Documents (continued)***

Initial Comment of NAWO, received Feb. 8, 2005 .....	#10
Completeness Review of the Department of Commerce, received Feb. 8, 2005 .....	#11
R-CURE Comments on Completeness, received Feb. 8, 2005 .....	#12
ISLR's Initial Comment on Completeness, received Feb. 8, 2005 .....	#13
Comment Regarding Completeness from Carol A. Overland, received Feb. 9, 2005 .....	#14
Reply Comments of ME3, received Feb. 22, 2005 .....	#16
Reply Comments of Xcel Energy, received Feb. 22, 2005 .....	#17

### ***Background Information***

On January 18, 2005, Xcel Energy (the Company or the Applicant) submitted its certificate of need application. The proposed "project" would be a nuclear waste storage facility consisting of:

- a reinforced concrete pad;
- modular concrete vaults to receive and store metal canisters loaded with spent fuel assemblies from the reactor at the Monticello Nuclear Generating Plant;
- light poles, approximately 40 feet tall;
- two fences surrounding the storage area with a monitored, clear zone between;
- a small concrete building; and
- various other electrical equipment, cameras, security devices, and temperature sensors.

The spent fuel storage installation falls under the definition of "large energy facility" in Minn. Stat. § 216B.2421, subd. 2 (8). Therefore, in accordance with Minn. Stat. § 216B.243, subd. 2, the facility cannot be constructed in Minnesota unless the Commission issues a certificate of need to the Applicant.

The certificate of need rules pertinent to this filing are Minn. Rules, parts 7855.0010 to 7855.0670. More specifically, the application requirements for spent fuel storage facilities are given by parts 7855.0230 to 7855.0280 and 7855.0600 to 7855.0670.

On January 20, 2005, the Commission issued a notice requesting comments on the substantial completeness of Xcel Energy's application. The comment and reply periods indicated in that

notice ended on February 8, 2004 and February 22, 2005, respectively.

On February 1, 2005, the Commission issued its ORDER EXTENDING COMPLETENESS REVIEW PERIOD. In that Order, the Commission indicated that it would consider the substantial completeness of the application "as soon as practicable."

The Commission received initial comments on completeness from the North American Water Office (NAWO), the Energy Division of the Department of Commerce (the Department), River Communities United for Responsible Energy (R-CURE), the Institute for Local Self-Reliance (ILSR), and Carol A. Overland.

The Commission received reply comments on completeness from Minnesotans for an Energy-Efficient Economy (ME3) and Xcel Energy.

### ***Summaries of Comments Received***

#### ***Initial Comments of the Department of Commerce***

The Department recommended that the Commission accept the application as substantially complete, pending submission of certain data, as described below.

First, the Department recommended that Xcel Energy provide appropriate pages from its resource plan that provides quantification of how the Company's conservation programs help determine the forecast of demand, as required by Minn. Rules, part 7855.0270, item F.

Second, for the alternatives discussed in section 4.4 of the application, the Department recommended that the Applicant state whether and how each alternative would differ from the Company's proposal with respect to items A to C and E to I of Minn. Rules, part 7855.0610. The Department suggested that a table may be a good way to present this information.

Third, the Department noted that the application provides some of the information required by Minn. Rules, part 7855.0640, items I and J. However, for the entries that are not specifically addressed, the Department recommended that the Company indicate whether there are instances of each within five miles of the proposed facility site (and, if so, a name and/or other description).

Fourth, the Department noted that the application provides some of the information required by Minn. Rules, part 7855.0640, item K. However, for the entries that are not specifically addressed, the Department recommended that the Company indicate whether there are instances of each within five miles of the proposed facility site (and, if so, a name and/or other description).

Fifth, the Department noted that, in response to Minn. Rules, part 7855.0650, item G, Xcel

Energy described permitting processes regarding runoff. However, the Department recommended that the Company provide data or estimates regarding runoff, as available.

The Department added that its comments on completeness were not meant as comments on the merits of the application, nor were they meant to relieve the Company from submitting additional information that may be needed during the course of the proceeding.

Finally, the Department noted that the Environmental Quality Board (EQB) will be preparing an environmental impact statement (EIS) for the proposed project. The EQB currently is determining the scope for that document. The Department suggested that the Commission provide parties an opportunity to comment on the development of a consistent set of reasonable alternatives to ensure that the Commission and the EQB consider the same types of alternatives and comparable levels of information. The Department suggested that commenting entities be given 15 days after the EQB's EIS scoping document is issued to submit (to the Commission) any additional comments on supplemental information that Xcel Energy should provide (early on) in this proceeding.

### ***Initial Comments of the North American Water Office***

NAWO alleged that the application is "embarrassingly and insultingly incomplete."

NAWO stated that Xcel Energy's discussion of the no-action alternative is incomplete because it considers only coal plants or gas-fired combined cycle plants as suitable replacements for Monticello. To be complete, NAWO argued, the application must thoroughly discuss the rich array of available distributed and dispersed generation technologies.

NAWO indicated that the Company's discussion of demand-side alternatives is incomplete without an analysis of the potential to reduce demand by sending real-time price signals to customers. NAWO claimed that earlier studies in Minnesota revealed that over half of all energy produced is wasted by the inefficiencies of end-use devices.

NAWO stated that Xcel Energy's discussion of the aging effects on the Monticello plant is limited to those aspects covered by blind faith and trust. While acknowledging that much has been learned about the reactor aging process, NAWO indicated that a large body of evidence leads to the conclusion that reactor aging effects can produce operational surprises and large cost increases. NAWO stated that the application, at a minimum, must "identify all reactor components subject to life-cycle management protocol, discuss that protocol in detail, provide the working assumptions and the confidence boundaries that life-cycle management actually will prevent age-related failure of reactor components, and discuss thoroughly the costs and consequences if aging effects do result in the failure of critical reactor components."

NAWO stated that the Commission must consider radioactive emissions not just from the proposed facility but also from the reactor. While it indicated that the Commission doesn't have direct jurisdiction over radioactive emissions, NAWO argued that the Commission needs to

consider the potential for radiation to increase costs to consumers. NAWO indicated that the Commission also needs to have information on dispersion patterns of routine radiation releases from the plant.

Similarly, NAWO indicated that security considerations for the storage installation also affect cost. To weigh the costs and benefits of the proposed facility, NAWO argued, the Commission must have information regarding security concerns. NAWO indicated that the application currently does not provide adequate answers to security questions.

Finally, NAWO indicated that the application does not provide adequate levels of information on cask management. NAWO stated that activities within the casks could cause the need to move and repair/maintain the casks and that the likelihood rises with the length of the storage period. NAWO stated that the application needs to discuss the protocol for dealing with these contingency situations.

### ***Initial Comments of the Institute for Local Self-Reliance***

ILSR stated that the cost information in the application is not presented in a way that citizen groups and ratepayers can understand. ILSR indicated that costs per kilowatt-hour (kWh) would be more helpful in answering an important question--what are the impacts on Minnesota ratepayers?

ILSR stated that the cost figures for Prairie Island operation are beyond the scope of this filing, are confusing to readers, and should be stricken. ILSR included references to the application where it claimed the discussion of Prairie Island blurred the factual evidence about Monticello's operations and alternatives to continued operation of Monticello. ILSR also indicated that Xcel Energy dismissed the re-racking alternative without providing economic analysis to support the conclusion.

ILSR asked that the Commission:

- direct Xcel Energy to submit a new alternative scenario analysis section;
- direct the Company to provide a detailed analysis on replacing Monticello's capacity and energy production, without references to Prairie Island unless Prairie Island is used to replace Monticello;
- instruct the Company to include a ratepayer impact section that shows the costs of each scenario on a \$/kWh basis for each customer class;
- instruct the Company to show the jurisdictional allocation of costs for alternative scenarios; and
- instruct Xcel Energy to provide a detailed cost analysis of re-racking the existing pool along with replacement of Monticello's capacity in year 2014.

### ***Initial Comments of Carol A. Overland***

Ms. Overland indicated that the application is vague and lacking in substance. She stated that the

application should be rejected, or held in abeyance until sufficient information is added.

Ms. Overland stated that:

- The application does not contain a forecast that takes into account new generation. Generation and load forecast information must be provided.
- The continued reference to Prairie Island is misleading and inappropriate. Information must be provided that is independent of Prairie Island.
- The application does not reveal whether Monticello would be used for native load or for export. Why does Xcel Energy need this power?
- The application does not provide (sufficient) information on increased costs as a result of continued operation (e.g., for more casks, for handling greater amounts of radioactive materials, for inflation, and for increased costs of decommissioning)?
- Xcel Energy must provide a working copy of its resource expansion model for use by the state and intervenors to verify the analysis provided by the Company.
- The Company should be required to verify its claims of economic benefits to the local communities, from the past into the future.
- Xcel Energy should provide a direct comparison of the costs of continued operation of Monticello (i.e., including the proposed facility and the annual capital and operating costs of the plant) with the cost of new base-load generation, including a combination of sources such as wind and gas.
- The application does not state what will happen to the nuclear waste at the end of the term of licensure.
- Information regarding the Private Fuel Storage, LLC initiative is inadequate, including the relationship of that company to Xcel Energy.
- Six hundred megawatts of renewable generation could be provided at Monticello without any substantial changes to the transmission grid.
- Greater documentation is needed for the claim that replacement of Monticello would result in higher costs, less reliability, and greater air quality impacts.

### ***Initial Comments of River Communities United for Responsible Energy***

R-CURE indicated that the completeness of the application is critical, given that the application and proceeding have multiple purposes, including review of the Commission's decision by the Legislature.

R-CURE stated that the application must address the following statutory requirements from 2003:

- Minn. Stat. § 216B.243, subd. 3b reads as follows:

Any certificate of need for additional storage of spent nuclear fuel for a facility seeking a license extension shall address the impacts of continued operation over the period for which approval is sought.

- Minn. Stat. § 116C.83 provides for legislative review of the Commission's decision, including the alternatives considered and rejected.
- Minn. Stat. § 116.83, subd. 6 (b) states that the water standards established in Minn. Stat. § 116C.76, subd. 1 apply to an independent spent fuel storage facility.

R-CURE also indicated that the application lacks a statistical basis which would allow economic analysis. R-CURE stated that the lumping together of the two nuclear plants complicates the analysis of the alternatives.

R-CURE also stated that Xcel's assumptions regarding the term of storage must be changed and that analysis of need is critically affected by those assumptions. R-CURE recommended that the Company be required to look at scenarios beginning at 75 years of storage, continuing until the time Yucca Mountain will close. According to R-CURE, Xcel should discuss risk, maintenance, monitoring, and operational standards and costs for periodic looks every 50 years or so. R-CURE added that the term of storage affects Minnesota's ability to continue oversight of nuclear waste within its borders.

R-CURE indicated that the Applicant's discussion of alternatives are based upon the assumption of temporary storage and that the discussion is woefully inadequate in both scope and detail. R-CURE stated that Xcel Energy should discuss waste isolation technologies, siting options including a permanent state repository, and a gas-wind alternative that combines existing gas-fired resources with wind contracts.

In its discussion of the issues, R-CURE also stated that:

- The language of Minn. Stat. § 216B.243, subd. 3 (b) extends the certification process and information to be analyzed to the license extension itself. Xcel must address the negative aspects of continued operations, rather than just the positive aspects currently in the application.
- The Legislature clearly intends that information be developed on the impacts of continued operation of the plant in conjunction with construction and operation of dry cask storage.
- Waste from re-licensed reactors is not in the Yucca Mountain queue and not covered by any state or federal permanent disposal plan. As a result, the term of storage for waste from the re-licensed reactor cannot be considered the same as that from operation of the plant through 2010.
- The sand terrace and flood plain at the plant location is the most hazardous of choices for long-term storage of nuclear waste.
- It is vitally important that Minnesota maintains its oversight of nuclear waste within its borders.
- Xcel Energy must run an alternatives analysis that matches new wind additions with existing gas-fired facilities. Because it has already determined that gas-wind is the cheapest and least-polluting alternative, the Company should not be allowed to easily dismiss this alternative.
- The Company should articulate the use of existing base-load resources in terms of market

- and load service. Without matching production to the needs of its customers, there is no end to the demands that the Applicant can assert from regional markets and beyond.
- Economic disclosures and analysis typical of rate cases should take place during this proceeding. There is no way to "true up" the unintended long-term economic, health, safety, and environmental consequences of a re-commitment to nuclear energy.

### ***Reply Comments of Minnesotans for an Energy-Efficient Economy***

ME3 indicated agreement with the parties that expressed concern about Xcel Energy's linking of Monticello and Prairie Island. ME3 stated that the linkage makes the Company's presentation inaccurate and therefore incomplete.

ME3 noted that the two nuclear plants use different technologies, have different capacities, produce waste at different rates, and are located in different areas. As a result, the number and types of alternatives could differ.

ME3 concluded that Xcel Energy should be directed to re-file a revised application that does not link the Prairie Island waste storage and alternatives with those for Monticello.

In a footnote, ME3 also indicated that it agrees with the Department's recommendation that the alternatives considered in the application should match those examined by the EQB in the EIS.

### ***Reply Comments of Xcel Energy***

Xcel Energy stated that the process should move forward to the next stages of record development, in particular the preparation of the EIS.

The Company indicated that:

- Its application is complete and compliant with Commission rules but that minor additions and clarifications could be provided.
- Discussion of alternatives in the application is adequate for the completeness review and that discussion of additional alternatives can take place within the EIS process, through discovery, and at the hearings.
- Much of the information sought by the parties is publicly available, making duplication in the application unnecessary.

While maintaining that the application provides sufficient information in the areas identified by the Department, Xcel Energy essentially agreed to address the items listed by the Department if the Commission wishes.

In response to ISLR, Xcel Energy stated that the Commission has no basis to require the Company to re-file its application with references to and analysis of Prairie Island removed. Although it argued that the rules do not require an estimate of ratepayer impacts and jurisdictional cost allocations, the Company indicated it could supplement the application with



such information. Xcel Energy also stated that ILSR's proposed alternative including re-racking does not go to application completeness and that the organization can bring its proposal to the EIS process and to the hearings.

Xcel Energy noted that it is clear NAWO disagrees with the Company's analysis. However, the Company argued that NAWO's proffered concerns regarding life-cycle analysis of reactor components, plant emissions, and security are not completeness issues. Xcel Energy also stated that it is not an applicant's responsibility to develop every alternative that an intervenor may wish considered in a certificate of need proceeding. However, the Company offered to supplement its application with further discussion of the screening analysis it used to narrow the list of alternatives considered. Regarding security, Xcel Energy pointed out that the issue is difficult to discuss in a public process because much information is treated as confidential by NRC requirements. The Company stated that NRC's security orders are mandatory and that they will be met at Monticello.

Xcel Energy stated that much of R-CURE's submission is argument about merits of the Company's case rather than specific comment regarding rule requirements. The Company indicated that R-CURE, in its comments on continued operation of the plant, offered only a general complaint that not enough has been done. Xcel Energy also pointed to numerous public documents, comprising thousands of pages, that are already available to the public regarding the impacts of operating nuclear plants. Regarding legislative review, the Company stated that the entire record will be available for review, including the EIS and testimony. Noting R-CURE's comments on groundwater, Xcel Energy maintained there is no plausible source of contamination from normal operation of the facility and therefore no need for elaborate mapping. The Company indicated that it disagrees with many of R-CURE's assertions about the term of storage and that its differences with R-CURE cannot be resolved with additions to the application. Finally, Xcel Energy argued that an alternative to Monticello coupling existing gas facilities with additional wind-powered generation is not feasible; the Company added that R-CURE is free to express its view at the hearings.

Xcel indicated that Ms. Overland confuses the steps within a certificate of need proceeding. In response to Ms. Overland, the Company stated that:

- Its forecast is available in its resource plan filing.
- Monticello is dispatched to serve native load and not sold on the wholesale market.
- The discussion of decommissioning in the application is adequate for finding the application complete.
- Intervenors bear the responsibility of demonstrating that an alternative to the proposed facility is feasible and prudent.
- The license for an on-site ISFSI can be renewed if it must operate for more than 20 years.
- Intervenors are free in later steps of the process to contest the validity of statements made in the application.

## ***Staff Analysis***

### ***The Environmental Impact Statement***

In accordance with Minn. Stat. § 116C.83, subd. 6 (b), an EIS is required for a new or expanded independent spent fuel storage installation. Under that statute, the EQB is the responsible governmental unit for the EIS.

As noted by the Department, EQB rules for an EIS include a scoping process to ensure that the EIS is thorough and otherwise appropriate. The completeness review conducted by the Commission, of course, should provide useful information for determining the scope of the environmental review document. As of the time of this meeting, the EQB's scoping process has not been completed. In response to comments from other state agencies and the general public, the EQB could determine a scope for the EIS somewhat broader than the list of alternatives included in the certificate of need application.

To ensure that the need record covers all of the relevant alternatives in sufficient detail, the Commission could adopt the suggestion of the Department to allow parties an opportunity to comment on a consistent set of reasonable alternatives. Requiring Xcel to submit supplementary material for the need process could prevent later delays in processing the application.

Since staff suggests that Xcel Energy be required to file a supplement, the Commission could wait until the supplement comes in before deciding whether any additional procedures are necessary to ensure an adequate record in this proceeding. Because it may take some time for the Company to prepare the supplementary material, much more likely will be known about the scope of the EIS by the time the supplement is filed.

### ***Substantial Completeness of the Application***

#### **The Completeness Process**

As indicated above, application requirements are specified by parts 7855.0230 to 7855.0280 and 7855.0600 to 7855.0670.

Minn. Rules, part 7855.0200, subp. 7 states as follows:

**Complete applications.** The commission shall notify the applicant . . . if the application is not substantially complete. Upon such notification, the applicant may correct any deficiency and may resubmit the application. A decision shall be made upon the revised application within six months of the date of resubmission, assuming it is then substantially complete.

The purpose of the completeness review is to ensure that the application contains the type and depth of information sufficient to begin the period for considering the merits of the filing.

Because of the relatively short time period for processing the filing, it would not be appropriate for the decision-maker and intervenors to have to use significant portions of the review period to obtain information that should have been in the filing. The word "substantially" was added to the rules to prevent rejection of a filing for a small number of minor, inadvertent omissions.

Historically, the decision-maker in the need process has allowed certificate of need applicants to correct deficiencies with a supplement.<sup>1</sup> In accordance with the rule cited above, the submission date of the supplement is considered the application date for the purposes of beginning the six-month review period. Assuming the application provides a very large percentage of the required information, the preparation of a supplement is much more efficient than requiring the applicant to revise and resubmit the entire document. Staff is unaware of any significant problems that have arisen from this practice of supplementing the application.

An applicant is allowed and expected to correct typographical and other inadvertent errors that are found in its application. Procedures for doing that are covered in Minn. Rules, part 7855.0200, subp. 3. Corrections may be made after the completeness determination, although the mailing of supplementary material provides a cost-effective opportunity to distribute corrections known about at that time.

Finally, staff notes that the completeness phase is only the start of the review process. As pointed out by Xcel Energy, the completeness review is not intended as a substitute for normal discovery requests and the submission of testimony. The completeness review therefore should not be used to obtain information going far beyond what is required by the rules. Having said that, staff notes that the type of proposed facility and what it implies for Xcel Energy's ratepayers and other Minnesotans makes this proceeding quite different from any previously held, including the re-racking and dry cask storage applications for the Prairie Island plant.

### **Staff's Completeness Review**

Staff has carefully reviewed the rule requirements, the application, and the written comments received by the Commission.

Staff believes that Xcel Energy is correct that some of the statements of the commenting entities tend to blur the distinction between completeness and later record development. Nevertheless, staff agrees that some supplementary materials should be submitted at this time. While some of the "missing" information could be supplied in response to information requests, staff believes it will be more efficient for the overall process if some of the concerns are addressed at this time. The Commission loses some control over record content once the process and record-making are turned over to the Administrative Law Judge.

Staff essentially agrees with all of the informational suggestions of the Department but not

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<sup>1</sup>The supplement is distributed using the same list as was used for the initial application, augmented by any names added since the initial application date.

necessarily the procedural recommendation for an additional comment period. Staff notes that the environmental data rules (i.e., some of the items in part 7855.0640) refer to an inventory that is no longer kept by the State Planning Agency (or its successors). While this may make it somewhat more difficult for an applicant to assemble the required information, utilities and pipeline companies have successfully done so in the past.

Staff is bothered by the suggestion of ISLR and others that consideration of Prairie Island can and should be taken out of this proceeding. Prairie Island currently has a license and storage capacity to continue operation of the first unit only to 2013 and the second unit only to 2014. If the Commission wishes to evaluate supply and demand over a period of 15-20 years, it is obvious that two outcomes are possible: with and without Prairie Island plant beyond 2014. Strategist is one of several generation expansion analysis tools used to find the lowest cost plan that meets future electric needs. Generation expansion analysis has been used in Minnesota and in other states for years for resource planning applications.

Theoretically, one could do a simpler analysis, comparing the incremental costs of Monticello operation with the costs of alternatives to replace 600 MW. However, least-cost operation of an electrical system is not that simple, and it makes no sense to accept a lesser analysis merely to remove mention of Prairie Island from the proceeding. Staff points out that both fates for the Prairie Island plant are considered in the scenarios evaluated by Xcel Energy. Tremendous amounts of data are entered into a generation expansion analysis, and staff believes discovery is a more appropriate vehicle than completeness review for parties to get after the details of the analysis. If parties believe the Company's analysis is not persuasive, they can say so in establishing their own case during the hearing process.

Having said that, however, staff agrees that this proceeding involves a proposal for a spent fuel storage installation at the Monticello plant and prime focus should be on the proposed facility, the generation and transmission infrastructure at and near the Monticello plant, and alternatives to continued operation of the Monticello plant.

Staff also notes that ultimately the record material is for the Commission's deliberation. While having the information filed in a manner understandable to the bulk of the public may be desirable, that desire should not overwhelm the consideration of whether Xcel Energy has responded adequately to the rule requirements, which were set in a public process. Staff recognizes that rulemaking took place many years ago, before dry storage technologies were utilized.

Staff notes, however, that the lack of rate impacts has come up in previous certificate of need hearings. If staff were to propose changes to the existing rules, one addition would be for an applicant to be required to translate costs into an indication of rate effects for customers in Minnesota (i.e., the change in the cost of a kilowatt-hour of electricity).<sup>2</sup> Staff believes the

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<sup>2</sup>Staff recognizes that even this calculation will require Xcel Energy to make certain assumptions. Staff is uncertain that differentiation by rate class is particularly meaningful, because

Commission has ordered utilities to provide rate impact information in previous certificate of need dockets at the time of the completeness review, and staff believes it would be reasonable to do so in this docket.

Staff also notes its reaction to certain statements by Xcel Energy in the Company's reply comments. The Company is correct that the nuclear waste storage rules do not require tables comparing electricity demand with generating capability. The Company also is correct that those tables are available in its resource plan filing. However, staff points out that when the rules were written nearly 30 years ago, their use in the context of re-licensing was not anticipated. Staff further points out that some participants in this proceeding may not be involved in the resource plan proceeding. Most significantly, the provision of supply and demand data appears to be consistent with the use of a resource expansion model such as "Strategist." As a result, staff believes load and capability tables should be included in supplementary materials provided by the Applicant.<sup>3</sup>

Staff agrees that the record of this proceeding will be used as the primary focus of the Commission's report to the Legislature, as outlined in Minn. Stat. § 116C.83, subd. 2 and 3, if the Commission authorizes dry cask storage at the Monticello plant. While the Commission's final Order in this proceeding likely would be a major focus of the Legislature's review, the Legislature likely would also review Xcel Energy's application. As a result, staff believes the application should address the expectations of the Legislature, to the extent they can be determined from the statute.

Xcel Energy has provided partial explanations in its reply comments as to why certain alternatives are infeasible. The Company also asserted in its reply comments that certain statements by other entities were and are factually incorrect. Staff notes that comments and reply comments from the completeness review are not normally made part of the official record considered by the administrative law judge and ultimately the Commission. As a result, if Xcel Energy believes some of those rebuttals are particularly pertinent, the Company probably should repeat them in the supplement, without reference to a particular set of comments. Other parties, of course, will have an opportunity to challenge and/or rebut the Company's assertions in subsequent phases of this proceeding.

It would be very difficult at the agenda meeting for the Commission to consider individually each direct and implied suggestion for additional information. As a result, staff has assembled a list of items that could be included in a supplement to the application. While staff has attempted to address many of the concerns of the commenting entities, those entities may quarrel with the inclusion of items on the staff's list (i.e., Attachment A), the wording of specific items, or the non-inclusion of other items. The Commission could, of course, amend that list.

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allocations likely will be changed in the next rate case.

<sup>3</sup>Staff recognizes that some explanatory footnotes may be required, as tables exist showing only existing facilities and other tables include planned facilities.

***Referral to the Office of Administrative Hearings***

Contested cases are designed for situations where facts may be in dispute. It is quite possible there will be material facts in dispute with respect to this application. In any case, there is no way that an absence of factual disputes could be known at the present time. If the proceeding were started as an informal proceeding but factual disputes arose later, the proceeding could take more time than if it were started as a contested case. Commission staff has observed that, even in proceedings where there is little or no opposition to a proposed facility, running the proceeding as a contested case has added very little time to the proceeding.

Another concern is that Minn. Stat. § 216B.243, subd. 4 indicates that the Commission "shall hold at least one public hearing pursuant to chapter 14." Obviously, someone will have to run that hearing; administrative law judges are accustomed to assuming that responsibility. At least one hearing probably would be held near the project area, for the convenience of persons most likely to be affected directly by any negative impacts of the proposed project.

Staff therefore believes that the filing eventually should be referred to the Office of Administrative Hearings for a contested case proceeding. The Commission also should work with the assigned administrative law judge to schedule a prehearing conference. However, in view of the unique factors involved with this application, it may be better to wait until the supplement is submitted and there is some clarity on the scope of the EIS before moving to the next phase of the process.

However, if the Commission decides to turn the case over to the Office of Administrative Hearings at this time, staff suggests that the Commission include certain procedural directives in its forthcoming orders to eliminate misunderstandings and to ensure the process is run as efficiently as possible.

***Minnesota Rules, Part 7855.0200, Subpart 5***

At the energy agenda meeting on January 27, 2005, a question was raised about whether the Commission should vary the requirement that "a public hearing shall be scheduled to commence, no later than 80 days after receipt of the application. . . ."

Staff notes that the 80-day requirement came from "rules governing certificate of need program, chapter 7847" and that those rules have been rescinded. Further, staff notes that the hearing process normally starts with a prehearing conference and that it may be possible to schedule a prehearing conference on or before the 80th day. As discussed herein, staff also notes that Xcel Energy may be required to submit a supplement, and the rules provide that the clock would start anew with the submission of the supplement.<sup>4</sup>

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<sup>4</sup>In effect, requiring a supplement to correct deficiencies means the application was incomplete as filed. As indicated earlier, the Commission could require an applicant to redo the entire application; however, that has always been considered bureaucratic and inefficient from a

However, if the Commission believes it necessary and/or desirable, it could vary the 80-day requirement using the three-part test of Minn. Rules, part 7829.3200.

The Commission could determine that rigid adherence to the 80-day requirement may adversely affect due process and therefore impose an excessive burden on the applicant, the Commission, other state agencies, other intervenors, and the administrative law judge. Since due process must be preserved, granting the variance would protect the public interest, not adversely affect it.

While it could be argued that lengthening the 80-day period would make it next to impossible for the Commission to reach a decision within a six-month period following the application date, that statutory period has historically been regarded as advisory and less significant than preserving due process.<sup>5</sup>

If Xcel Energy is required to submit supplementary material to complete the application, staff does not believe it is necessary for the Commission to take any action at this meeting regarding the 80-day issue.

### ***Decision Options and Staff Recommendations***

#### ***A. Substantial Completeness of the Application and Other Procedural Issues***

In response to this issue, the Commission could:

1. accept the application as substantially complete as submitted on January 18 and refer the docket to the Office of Administrative Hearings to hold a contested case proceeding (which would allow the Commission and the assigned administrative law judge to schedule a prehearing conference as soon as possible);
2. accept the application as substantially complete contingent upon Xcel Energy addressing in a supplement the specific data elements and issues listed in Attachment A and refer the docket to the Office of Administrative Hearings to hold a contested case proceeding (which would allow the Commission and the assigned administrative law judge to schedule a prehearing conference as soon as possible);
3. decline to accept the application as substantially complete at this time, hold the completeness review in abeyance, direct Xcel Energy to submit a supplement addressing the specific data elements and issues listed in Attachment A, and take no action on any other procedural issues at this time; or

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resource standpoint.

<sup>5</sup>A statute, of course, cannot be changed by a rule or a rule variance.

4. make some other decision deemed more appropriate.

Staff recommends either option 2 or 3, depending upon how urgent the parties believe it is to hold a prehearing conference and initiate discovery.

***B. Second Comment Period Following the EQB's Scoping Decision for the EIS***

In response to this issue, the Commission could:

1. adopt the suggestion of the Department to establish a second comment period, allowing state agencies, groups, or individuals to suggest supplementary material for the Company to provide to ensure comparability between the alternatives considered in the EIS and in the certificate of need process;<sup>6</sup>
2. decline to order a second comment period at this time, on the basis that needed procedures will become much clearer once a supplement is submitted and the EQB's scoping review is nearer to completion; or
3. make some other decision deemed more appropriate.

Staff recommends option 2, especially if option 3 (or some close variant of it) is selected for decision category A above.

***C. Variance to the 80-Day Requirement of Minn. Rules, Part 7855.0200, Subp. 5***

Staff suggests that this issue be taken up only if the Commission accept the application as substantially complete as submitted on January 18, 2005. If supplementary material is required, a rule variance probably is not necessary.

In response to questions about the 80-day requirement in Minn. Rules, part 7855.0200, subp. 5, the Commission could:

1. vary the 80-day requirement, to ensure that the parties and the administrative law judge have sufficiently flexibility in setting a hearing schedule to ensure due process; or
2. make some other decision deemed more appropriate.

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<sup>6</sup>Staff suggests that the Commission allow the Executive Secretary and staff to determine the appropriate time and lengths of comment periods. However, staff's best guess is that two weeks for comments and one week for replies would be appropriate, starting as soon as possible after the EQB issues the scoping decision.



#### ***D. Other Information, Requests and Directives***

Staff suggests that the procedures below need to be considered now only if the Commission refers the case to the Office of Administrative Hearings at this time. If the Commission does not, there will be a second meeting. If this decision category is taken up, staff recommends option 1.

To ensure the efficient and thorough processing of the application, the Commission could:

1. include in the order (or one the orders) coming out of this meeting:

- notice of a prehearing conference (with a specified date, time, and location to be determined by the Administrative Law Judge and Commission staff);
- the name and telephone number of the Commission employee (David Jacobson, 651-297-4562) designated to facilitate citizen participation in the process;
- a request that the Department of Commerce continue to study the issues and indicate during the hearing process its position on the reasonableness of granting a certificate of need to the Company;
- a requirement that the Applicant facilitate in every reasonable way the continued examination of the issues by the Department of Commerce and the Environmental Quality Board;
- (if a supplement is required to complete the application) a request that the Applicant place the supplement on its website at the same location as the original application filed on January 18, 2005;
- a directive that Commission staff work with the Administrative Law Judge in selecting suitable locations for the public and evidentiary hearings on the application; and
- a directive that the Applicant provide notice of the public and evidentiary hearings in newspapers of general circulation at least ten days prior to the start of the hearings, that such notice be in the form of visible display ads, that the applicant obtain proofs of publication of such ads from the newspapers selected, and that the applicant consult with Commission staff on the timing, text, and distribution of such ads prior to publication; or

2. make some other decision deemed more appropriate.

## **Attachment A**

### ***Supplementary Information for Xcel Energy to Provide at This Point in the Process***

Xcel Energy shall submit a supplement of the application to address the following data elements and issues in greater detail than they are addressed in the January 18, 2005 filing.

1. The specific rule elements listed by the Energy Division of the Department of Commerce in its February 8, 2005 comments.
2. Jurisdictional cost allocations, plus a quantification of Minnesota customers' rate impacts for each of the alternatives considered in the application and supplement (i.e., both for the storage facility and continued operation of Monticello and for the various possible alternatives to replace 600 MW).
3. Quantification of purported economic benefits of the Monticello plant to local communities.
4. Load and Capability Report tables indicating projected kilowatt supply and demand for at least the "forecast years" as defined in the certificate of need and resource planning rules.
5. A list and description of other dry storage systems, if any, in use in the United States or other countries for spent fuel from boiling water reactors, and an explanation of why they were rejected for possible use at Monticello.
6. A discussion of age-related degradation of the plant and storage canisters, the review processes of the NRC for considering such degradation, and procedures for dealing with a canister problem once it has been placed in the storage vault.
7. An analysis of the costs of long-term storage of spent fuel (e.g., 50, 100, and 200 years) that would result from 20 years of operation of a re-licensed Monticello plant, indicating the types of and costs of actions that might be necessary (e.g., if relevant, replacement of storage system components, movement of the canisters back to the pool, construction of any other needed facilities, and any additional security measures after the plant is shut down).
8. A discussion of radiation monitoring for the Monticello plant, an indication of dispersion patterns for routine radiation releases from the plant, and a comparison of monitoring results with the established federal standards.
9. Additional information regarding the re-racking alternative, including an indication of likely cost and a discussion of the implications for storage and/or disposal of the discarded racks.
10. Analysis of a combined wind power and gas-fired power alternative for replacing Monticello's capacity, including an indication of the amount of each component that would have

to be added to the system<sup>7</sup>, a discussion of the feasibility/availability of such a combination, and appropriate information in the areas of cost, reliability, and environmental effects.

11. Analysis of at least one representative "community-based" alternative for replacing Monticello's capacity, consisting of a reasonable combination of smaller sources (e.g., demand-side management<sup>8</sup>, wind power, and any other distributed generation sources), including a discussion of the feasibility/availability of such a combination, as well any available and pertinent information in the areas of cost, reliability, and environmental effects.

12. (Optional) A summary of information included in the Company's reply comments that are deemed to have evidentiary value.<sup>9</sup>

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<sup>7</sup>This is intended to mean additional capacity that would have to be added that currently is not under construction or under contract.

<sup>8</sup>This analysis should include a discussion of real-time price signals to customers and other rate design options for affecting demand, including summary information from the recent Commission dockets addressing such issues (e.g., Docket No. E-002/M-01-46, E-002/CI-01-1024 and E-002/M-02-1894).

<sup>9</sup>As pointed out earlier, comments on completeness are not routinely made part of the evidentiary record considered by the ALJ and the Commission. The application and any supplements are.